

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications)	
in the 800 MHz Band)	
)	WT Docket No. 02-55
Consolidating the 900 MHz Industrial/)	
Land Transportation and Business Pool Channels)	
)	
Amendment of Section 2.106 of the Commission's)	
Rules to Allocate Spectrum at 2 GHz for use by)	ET Docket No. 95-18
the Mobile-Satellite Service)	
)	
Amendment of Part 2 of the Commission's Rules)	
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction of)	ET Docket No. 00-258
New Advanced Wireless Services, including Third)	
Generation Wireless Systems)	
)	
Flexibility for Delivery of Communications by)	
Mobile Satellite Service Providers in the 2 GHz)	IB Docket No. 01-185
Band, the L-Band, and the 1.6/2.4 GHz Bands)	

To: The Commission

JOINT PROPOSED BAS RELOCATION PLAN

In conjunction with the Consensus Plan to improve public safety communications in the 800 MHz band and the reallocation of spectrum at 1990-2025 MHz to the Mobile Satellite Service ("MSS") and fixed and mobile services, the Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB"), and Nextel Communications, Inc. ("Nextel") hereby submit a plan for relocating Broadcast Auxiliary Service ("BAS") licensees out of the 1990-2025 MHz band. Under this plan, Nextel would commit to funding the entire cost of relocating all BAS incumbents nationwide from the 1990-2025 MHz band, subject to Nextel's being assigned replacement spectrum in the 1910-

1915/1990-1995 MHz band and receiving full credit for its contributions to the BAS relocation costs in the pending *800 MHz Public Safety* proceeding. This relocation plan promotes the public interest in three significant ways:

First, it would create greater certainty and expedite the clearing of the replacement spectrum at 1910-1915/1990-1995 MHz. That band would be assigned to Nextel in exchange for its substantial contributions to the realignment of the 800 MHz band, including providing additional spectrum for public safety communications, and the relocation of BAS incumbents in the 1990-2025 MHz band. This exchange, proposed in the Consensus Plan submitted in the *800 MHz Public Safety* proceeding, would permit the Commission to achieve its public interest objectives. MSTV and NAB recognize these important public interest benefits and fully support the Consensus Plan, including the assignment of the 1910-1915/1990-95 MHz band to Nextel as replacement spectrum.

Second, the plan would eliminate the flawed, market-segmented approach used in the Commission's current BAS relocation plan. As MSTV and NAB have argued in their pending petition for reconsideration, the current relocation plan would seriously disrupt BAS operations and threaten the ability of television broadcasters to provide electronic news gathering ("ENG") service to the public. The relocation plan proposed in this filing would resolve broadcaster concerns regarding these issues and would help to ensure a BAS relocation process that preserves the live coverage of local emergencies, news, and sports that the public has come to expect.

Third, the revised relocation plan would facilitate entry by MSS and terrestrial wireless licensees in the 1995-2025 MHz band by accelerating the relocation of BAS incumbents

from the entire 1990-2025 MHz band and requiring Nextel to pay the upfront costs of clearing BAS incumbents from this spectrum.

The MSTV-NAB-Nextel BAS Relocation Plan

Under the relocation plan, Nextel would pay the costs of relocating all BAS licensees in the 1990-2025 MHz band in all markets. The relocation would take place in two stages. Nextel would use its best efforts to complete the two stages within 18 months and 30 months, respectively, after the effective date of a Commission Order adopting the Consensus Plan or similar 800 MHz realignment plan that assigns Nextel replacement spectrum at 1910-1915/1990-1995 MHz and that addresses the concerns raised by the Consensus Parties in this proceeding (the “800 MHz Realignment Order”). However, MSTV, NAB and Nextel recognize that these targets may be adjusted to take into account issues regarding the availability of equipment, tower crews and other installation technicians. MSTV, NAB, and Nextel, working with the Society of Broadcast Engineers (“SBE”) and other broadcast groups, would jointly develop a schedule for the order in which markets are relocated based on the following criteria:

- The first stage of relocations would include: (1) markets in which Nextel wishes to deploy terrestrial wireless services in the 1.9 GHz band immediately; and (2) adjacent markets that raise inter-market coordination and interference problems.
- The second stage would include all remaining markets. These markets would continue operating on the seven channels under the current BAS band plan until they are relocated to the new band plan at 2025-2110 MHz. Nextel will initiate negotiations with these “second-stage” market licensees prior to the end of the first stage.

MSTV, NAB, and Nextel also would work together (along with SBE and other interested broadcast parties) to develop a joint implementation plan that would be submitted to the Commission. The joint implementation plan would address such issues as:

- Timing of individual market relocations within the two-stage plan described above. Provided that the 800 MHz Realignment Order is released by May 31, 2004, a mandatory negotiation period ending February 28, 2005 would apply to stage-one relocations and a

mandatory negotiation period ending December 31, 2005 would apply to stage-two relocations.

- Measures to minimize disruption to ENG services during the transition.
- Measures to facilitate an expeditious and efficient relocation process.

To the extent permitted by antitrust laws, MSTV, NAB, and Nextel would also work together to preserve choice and maximize the economies of scale in equipment purchases and to develop a template relocation agreement.

MSTV, NAB, and Nextel agree that Nextel's commitment to fund this BAS relocation plan is contingent on (1) the Commission's adoption of the Consensus Plan in the *800 MHz Public Safety* proceeding (or similar 800 MHz realignment plan that addresses the issues and concerns Nextel has raised in this proceeding), including the assignment of 1910-15/1990-95 MHz as replacement spectrum for Nextel; and (2) Nextel's receiving full credit for the actual BAS relocation costs in the Commission's valuation of Nextel's contributions to the 800 MHz band realignment in the *800 MHz Public Safety* proceeding.

Public Interest Benefits of the BAS Relocation Plan

Protecting Broadcasters' Ability to Provide Local News Coverage to the Public.

In adopting the current BAS relocation plan in November 2003,¹ the Commission sought to accommodate a complex spectrum reallocation scenario and to balance competing interests in preserving incumbent services while minimizing the upfront costs of making spectrum available for new services. The Commission's current plan, however, requires BAS incumbents in Markets 31-210 to vacate *two* BAS channels without receiving *any* compensation or adequate assurance of future compensation. This would severely hamper the ability of television

¹ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Services*, 18 FCC Rcd 23638 (2003) ("*Third Report and Order*").

broadcasters in these markets to provide ENG services, including local coverage of emergencies, news, and sports, certainly in the short term and quite likely over the long term as well.

Because of these problems with the current BAS relocation plan, MSTV and NAB have filed a petition for reconsideration that remains pending before the Commission.² Members of Congress have also expressed concerns about the Commission's November 2003 decision. In a March 23, 2004 letter to Chairman Powell, Chairman Upton and Congressman Dingell stated that the current plan "may seriously impair the ability of local television stations to provide the communities they serve with live, local coverage of emergencies as well as routine news events."³

The MSTV-NAB-Nextel BAS relocation plan would address these concerns. It would relocate all BAS licensees in all markets in an expedited process with the goal of completing all relocations within 30 months of the effective date of the 800 MHz Realignment Order. Importantly, the relocation process would be designed to avoid disruption to broadcasters' ENG operations. The particular sequence in which markets would be relocated would take into account any possible inter-market coordination and interference problems. Moreover, BAS licensees relocated in "stage 2" would continue operating on all seven channels under the current BAS band plan until they are relocated to the new band plan at 2025-2110 MHz. In no market would BAS operations be required to vacate spectrum before the relocation is complete. The MSTV-NAB-Nextel relocation plan would thus minimize disruption to incumbent BAS services in relocating to the new BAS band plan at 2025-2110 MHz. This

² Petition for Reconsideration and Clarification of MSTV and NAB, ET Docket Nos. 95-18 & 00-258, IB Docket No. 01-185 (Jan. 7, 2004).

³ Letter from Honorable Fred Upton, Chairman, Subcommittee on Telecommunications and the Internet, and Honorable John D. Dingell, Ranking Member, Committee on Energy and Commerce, to FCC Chairman Powell, at 1 (March 23, 2004).

would serve the public interest by preserving the ability of broadcasters to serve the public with timely coverage of emergencies and news events.

Improving Public Safety Communications. Over two years ago, the Commission initiated a proceeding to address commercial mobile radio service (“CMRS”) – public safety interference in the 800 MHz band.⁴ The Commission’s objectives in this proceeding are to remedy this serious interference problem, minimize disruption to incumbent licensees, and ensure sufficient spectrum for critical public safety communications.⁵ In August 2002, the public safety community, private wireless parties, and Nextel filed the Consensus Plan, which would achieve all of the Commission’s objectives in its 800 MHz public safety proceeding. It would realign the 800 MHz band to address the underlying cause of CMRS–public safety interference. It would also provide additional spectrum for public safety communications.

Nextel would play a critical role in this realignment plan, contributing spectrum and substantial financial resources to relocate incumbent 800 MHz licensees and to provide additional public safety spectrum. To accomplish these public interest goals and make Nextel whole for its contributions, the Consensus Plan calls for the Commission to assign the 1910-1915/1990-1995 MHz band as replacement spectrum. A portion of the proposed replacement spectrum overlaps with the current BAS band plan.

MSTV and NAB fully support the Consensus Plan, including the assignment of the 1910-1915/1990-1995 MHz bands to Nextel as replacement spectrum. The Consensus Plan will address a pressing public safety interference problem and provide additional spectrum to public safety communications. The MSTV-NAB-Nextel BAS relocation plan will help achieve

⁴ *Improving Public Safety Communications in the 800 MHz Band*, 17 FCC Rcd 4873 (2002).

⁵ *Id.* ¶ 2.

these important public interest goals by relocating BAS incumbents in a manner that provides Nextel expeditious access to the 1.9 GHz replacement spectrum. Such expeditious access will minimize the burdens imposed on Nextel as it relocates its commercial operations pursuant to the 800 MHz Realignment Order.

MSTV and NAB have conservatively estimated that BAS relocation costs will be \$512 million; the actual costs may be higher.⁶ In valuing Nextel's contribution to 800 MHz realignment, the Commission should give Nextel full credit for the BAS relocation costs it incurs. This would be justified because Nextel would be funding these costs as part of the Commission's overall plan to achieve its public interest goals in the *800 MHz Public Safety* proceeding.

Clearing Spectrum for MSS and Advanced Wireless Service Licensees. In establishing the current BAS relocation rules, the Commission expressed concern about requiring one or more MSS entrants "to pay substantial up-front BAS relocation costs and seek pro-rata reimbursement from subsequent licensees, without the benefit of having had a revenue stream as it builds out its system."⁷ The MSTV-NAB-Nextel BAS relocation plan would eliminate this concern by requiring Nextel to pay all up-front BAS relocation costs. This would facilitate entry by MSS licensees into the 2000-2020 MHz band.

The 30-month timeframe for relocating all BAS incumbents under the MSTV-NAB-Nextel relocation plan should ensure that the 1990-2025 MHz band is cleared nationwide before MSS entrants are ready to begin service in the 2000-2025 MHz band. If one or more MSS entrants is prepared to launch service before the spectrum is cleared in all markets, the key

⁶ See *Ex Parte* Letter from Lawrence A. Walke, NAB, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 95-18, IB Docket No. 01-185 (Oct. 31, 2003).

⁷ *Third Report and Order* ¶ 40.

principles of the MSTV-NAB-Nextel plan should continue to apply: (1) Nextel will remain responsible for paying the up-front costs of the relocation and (2) no BAS incumbent will be required to vacate any spectrum at 1990-2025 MHz until after it has been relocated to the new seven-channel, digital band plan at 2025-2110 MHz.

The BAS relocation plan proposed herein would also facilitate entry by new terrestrial wireless licensees into the 1995-2000 MHz and 2020-2025 MHz band. The Commission has reallocated this spectrum from MSS to fixed and mobile use, and has proposed designating it for CMRS services, including advanced wireless services.⁸ Because Nextel would assume responsibility for relocating BAS incumbents out of the spectrum on an expedited basis, new licensees in the spectrum could deploy their operations without having to front the costs of clearing BAS incumbents from the entire 1990-2025 MHz band.

MSS licensees and terrestrial service licensees in the 1995-2025 MHz band should be required to fund their *pro rata* share of the cost of clearing this spectrum, with such payments being deposited in the U.S. Treasury. Unlike Nextel, which would be receiving replacement spectrum as part of a plan to implement 800 MHz band realignment, these licensees would be receiving initial licenses.⁹ The Commission should establish appropriate mechanisms for calculating and collecting these *pro rata* contributions.

⁸ *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, 18 FCC Rcd 2223, ¶¶47-49, 68 (2003).

⁹ *See, e.g., Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 (1992) (requiring new Personal Communications Services licenses to compensate displaced fixed microwave users at 1.9 GHz).

Conclusion

The MSTV-NAB-Nextel plan would help resolve two longstanding issues before the Commission and yield substantial public interest benefits. After more than nine years of debate and uncertainty over how to relocate BAS incumbents, the proposed plan provides the Commission with a clear path for relocating BAS incumbents in a way that preserves valuable ENG services for the public. The plan also addresses a key element in the Commission's *800 MHz Public Safety* proceeding, facilitating the resolution of a serious public safety interference problem that first arose over four years ago. MSTV, NAB, and Nextel urge the Commission to act expeditiously to bring both proceedings to a rapid conclusion consistent with the plan described herein.

Respectfully submitted,

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